

REMARKS

Claims 1-34 and 37-49 are pending in this application all of which are subject to a restriction requirement. Applicants have cancelled claim 32, which recited that the container is a paint container. Applicants have amended independent claims 1, 6, and 34 to recite that the container is a paint container. Support for the amendments in claims 1, 6, and 34 can be found, *inter alia*, in cancelled claim 32 as originally submitted.

In view of the foregoing amendments and the following remarks, Applicants respectfully submit that the claims are now in condition for allowance. Applicants point out that the amendments made herein are made without prejudice to the future prosecution of such cancelled, amended or modified subject matter in a related divisional, continuation or continuation-in-part application.

Applicants submit that the presently claimed invention, as amended, is directed to a container assembly comprising a paint container, a cover, and a locking member which passes over a rim of the container and/or a rim of the cover when the locking member hinges about an axis to lock the cover onto the container. The use of the particular locking member arrangement according to the presently claimed invention in paint containers is not known, regardless whether the locking member is on the container or the cover, and whether the locking member hinges upwardly or downwardly. On this basis, a patent has been granted in the UK from a corresponding patent application, see GB2422598.

Further, in an Office Action dated March 28, 2011, the Office alleges that the present application contains claims directed to more than one species of the generic invention. According to the Office the species lack unity of invention because they allegedly are not so linked as to form a single general inventive concept. The Office requires the election of a single species to which the claims shall be restricted if no generic claims is finally held to be allowable. The Office identified the species as follows:

I	Figures 1-3A
II	Figures 4 and 5
III	Figure 6
IV	Figure 7
V	Figure 8
VI	Figure 9
VII	Figures 10 and 11
VIII	Figure 12
IX	Figure 13
X	Figure 14
XI	Figure 15

Applicants hereby provisionally elect with traverse the species as encompassed in I, i.e. as encompassed by Figures 1-3A. Applicants submit that the elected species read on claims 1-16, 19-31, 33, 34, and 37-49. Applicants expressly reserve the right to file a divisional application encompassing the non-elected subject matter prior to issuance of this application.

This election is made with traverse because it is believed that the allegedly different species could be regrouped into a single species/group, or in the alternative into three groups for searching and examination purposes. Applicants note that, as amended the claims are directed to a container assembly comprising a paint container, a cover, and a locking member which passes over the rim of the container and/or rim of the cover when the locking member hinges about an axis to lock the cover onto the container. Applicants further note that as discussed above, such claims, as amended, were granted in the UK as GB Patent No. 2422598. In view of the granted GB patent applicants believe the Election of Species requirement is

improper and the allegedly different species should be regrouped into a single species/group for searching and examination purpose.

In addition, applicants submit that “[I]f the search and examination of an entire application can be made without a serious burden, the Examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.” M.P.E.P. §803. Therefore, Applicants believe that searching and examining all alleged species together, would not place an undue burden on the Examiner to search using the USPTO’s classification system.

In the alternative, applicants submit that the Examiner’s division of allegedly different species is overly restrictive, identifying 11 allegedly different species. Searching the alleged species together in three groups would not place an undue burden on the Examiner to search and examine using the USPTO’s classification system. Applicants submit that, for searching purposes, identifying the following three species, of which the first encompasses the elected species, would not place an undue burden on the Examiner. Species/group 1 (figures 1 to 9 and 13) shows a locking member which hinges upwardly from the unlocked to the locked position. Species/group 2 (figures 10 to 12) shows a locking member similar to species/group 1, which also has an aperture in the locking member. Species/group 3 (figures 14 and 15) shows a locking member which hinges downwardly from the unlocked to the locked position.

For these reasons, Applicants submit that the claims, as amended, do not place an undue burden on the Examiner for the purpose of searching, when identifying all alleged species as one species or in the alternative as three species. Therefore, Applicants believe that examining the claims identifying the alleged species as a single species or in the alternative as three species would expedite prosecution of the present application and respectfully request withdrawal of the restriction requirement.

If, in the opinion of the Examiner, a telephone conference would advance the prosecution of the Application, the Examiner is invited to telephone the undersigned attorney. It is respectfully submitted that the pending claims are now allowable and

an early and favorable action on the merits is earnestly solicited. The Commissioner is hereby authorized to charge any fees which may be necessary for consideration of this paper to Kenyon & Kenyon LLP Deposit Account No. 11-0600.

Respectfully submitted,

Dated: July 27, 2011

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